

INITIAL STATEMENT OF REASONS

Forest Legacy Program Procedures, 2011

[Published January 21, 2011]

Title 14, Chapter 9.9, Articles 1- 7 of the California Code of Regulations (14 CCR):

Adopt

- § 1570 Purpose of Guidelines
- § 1571 Definitions
- § 1572 Eligibility Criteria
- § 1572.1 Eligible Costs.
- § 1572.2 Ineligible Costs
- § 1573 Applications and Content
- § 1573.1 Applications Review
- § 1573.2 Disapproval of Application
- § 1573.3 Priority Ranking of Accepted Applications
- § 1573.4 Availability of Federal Funds
- § 1573.5 Availability of State Funds
- § 1573.6 Non-funded Applications
- § 1574 Conservation easement Criteria
- § 1575 Funded Applications
- § 1575.1 Responsibilities of the Department
- § 1575.2 Landowner Responsibilities
- § 1575.3 Disbursement of Funds
- § 1576 Responsibilities for Monitoring

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATIONS ARE INTENDED TO ADDRESS

In 2000, Governor Gray Davis signed into law SB1832, the California Forest Legacy Program Act (Act). This law allows the California Department of Forestry and Fire Protection (CAL FIRE) to acquire conservation easements, and permit Federal, State agencies, local governments and nonprofit land trust organizations to hold conservation easements acquired pursuant to the California Forest Legacy Program. The Act allows the Department to enter into contracts with the Wildlife Conservation Board for the purposes of easement acquisition (section Public Resources Code 12240). The Act established a funding source for California. The funding sources may be donations, gifts, federal grants or loans,

other appropriate sources or sale of bonds pursuant to the Safe Neighborhood Parks, Clean Water, Clean Air and Coastal Protection Act of 2000 (section Public Resources Code 12241). The California Forest Legacy Program Act of 2007 permanently established the program initially passed in 2000.

The California Forest Legacy Program (Program) as administered by CAL FIRE was developed in response to the Federal Forest Legacy Program. The Federal Forest Legacy Program (16 U.S.C. Sec. 2103c) program was part of the 1990 Federal Farm Bill. The objective of the Federal Forest Legacy Program and the California Forest Legacy Program is to identify and protect environmentally important forestlands that are threatened by present or future conversion to non-forest uses. Priority is to be given to lands that can be effectively protected and managed and that have important scenic, recreational, timber, riparian, fish and wildlife, threatened and endangered species, and other cultural and environmental values.

States wishing to receive federal funding and participate in the Federal Program are required to submit to the USDA an Assessment of Need (AON) identifying forested lands, which merited inclusion into the program. The Federal Forest Legacy Guidelines defined eligibility as, "... an environmentally important forest area that is threatened by conversion to non-forest uses." Furthermore the Guideline continues, "Individual states are responsible for determining their definition of 'threatened' and the definition of 'environmentally important forest areas.'" However the Guidelines go on to say, "Environmentally important forest areas shall contain one or more of the following important criteria:

- Scenic resources
- Public recreational opportunities
- Riparian areas
- Fish and wildlife habitat
- Known threatened and endangered species
- Known cultural resources
- Other ecological values; and/or
- Provide opportunities for the continuation of traditional forest use, such as forest management, timber resources, other commodity use, and outdoor recreation..."

By 1995 California developed their first Assessment of Need (AON). This original document included six counties: Mendocino, Sonoma, Santa Cruz, San Mateo, Riverside and San Diego. In 1999, an amendment was developed that greatly increased the amount of Forest Legacy Areas by adding 28 counties to the AON. This amendment was signed by the USFS in January of 2001.

The primary need for the proposed regulations is to fulfill statutory requirements to establish the California Forest Legacy Program, in accordance to Division 10.5 (the California Forest Legacy Program Act of 2000), Chapter 2, section 12249 of

the PRC. This PRC requires “The board (*State Board of Forestry and Fire Protection*) shall adopt rules and regulation for the implementation of this division, including the standards, criteria and requirements necessary for acquiring conservation easement. PRC Section 12249.5 requires “Rules or regulations adopted by the board pursuant to this section shall be adopted in accordance with the Administrative Procedure Act [Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

The following proposed rules are submitted as a requirement of the California Forest Legacy Program Act of 2000, as contained in Section 12200-12292 Public Resource Code. These statues establish a program for securing conservation easements for private forest lands. A conservation easement is a contract between a landowner and a government entity or nonprofit such as a land trust. The recorded easement permanently restricts use of specific land to protect its conservation values.

§ 1570 Purpose of Guidelines, defines the intended purpose of the proposed regulations. These include establishment of the rules and regulation for the program implementation; guidance to participating organizations regarding: eligibility criteria, review of applications, requirements of conservation easements and responsibilities of participants; guidance to the State Forest Stewardship Coordinating Committee (SFSCC) charged with reviewing, evaluating , and ranking those proposed project; and to provide visibility of the process for the public.

§ 1571 Definitions establishes definitions for terminology used in the regulation. Definitions are needed to improve clarity to the regulated public, provide for consistent application of the proposed regulations, and provide brevity for the regulatory text.

§ 1572 Eligibility Criteria establishes the parameters and disclosure requirements for a parcel's eligibility for the program. These criteria also provide information for ranking projects. Eligibility criteria include such parameters as: land must be private forest, be threatened by potential conversion to non forest or watershed uses, possess unique environmental values, and be managed for traditional forest uses (timber harvesting, grazing or recreation) or habitat maintenance. Specific language further describing traditional commodity uses; “timber harvesting and rangeland livestock production which is utilized for economic purposes” is included. Similarly, language described relevant habitat maintenance goals is included. The criteria are necessary for consistency with

undying statute and to ensure the appropriate properties consistent with the statute are selected.

§ 1572.1 Eligible Costs establishes the types of costs that can be will be reimbursed by the Legacy Program to applicants who participate in the program or other entities involved in closing cost or other costs associated with the holding the conservation easement. Eligible costs include the purchase price of the lands or easement value of lands, the development of the conservation easement or other plans, and other acquisitions costs such as title reports, appraisals, hazardous material disclosures and survey work. The subsection also addresses requirements for the type of appraisals used and the need for a 25% nonfederal applicant match when federal funds are use. Eligible Costs are set by statute in PRC 12242 and Title 16 of U.S.C. 2103 et seq.

§ 1572.2 Ineligible Costs establishes the types of costs that cannot be reimbursed by the Legacy Program to applicants or others who participate in the program or those holding the conservation easement. Ineligible Costs include appraisals of outright donations of conservation easements and easement compliance monitoring costs. Ineligible Costs are set by statute in Title 16 of U.S.C. 2103 et seq. or are those ineligible costs established by other government entities or programs granting funds to a project.

§ 1573 Applications and Content establish the information needed and format to enable the Director to verify the parcel's eligibility for the program. The application is a form developed by the director and contains information such as names, locations, ownership titles, property uses and objectives, evaluations of ecological values and threats to conversion, estimates of property economic value, and objectives for rights of conveyance. A standard application is needed to facilitate submittal by applicants and provide for equitable, information and efficient review of projects by the Director. The application is incorporated by reference and is titled: "California's Forest Legacy Program Application" and found at http://www.fire.ca.gov/resource_mgt/downloads/2005-06LegacyApplicationForm.pdf.

§ 1573.1 Applications Review establishes the process for the review of the application by the Director. The review process includes a field review by appropriate agency representatives, a limit in the duration of the application review (180 days), decision notification time frames (within 10 days of the decision of the Director), and reason for any disapprovals and re-submittal options. This process is necessary to provide the reviewing agencies enough time to thoroughly evaluate projects and to provide a time-certain period for applicants to facilitate their planning needs.

§ 1573.2 Disapproval of Application establishes the criteria used by the Director to disapprove an application. Criteria for disapproving projects are necessary to ensure projects are equitable considered and applicants are subjected to impartial reviews. The criteria include lack of satisfying the eligibility criteria, lack

of clear title, other projects ranked higher, insufficient money allocated for project, an entity other than Department of Forestry and Fire Protection to hold title to the easement when the primary purpose of said easement would be conservation of working forest lands, or other relevant considerations such as the parcel cannot be effectively managed or monitored.

§ 1573.3 Priority Ranking of Accepted Applications establishes the criteria for the Director to use to evaluate and rank projects submitted to the Program. A methodical evaluation and ranking process ensure projects are equitable considered and applicants are subjected to impartial reviews. This is also a specific requirement of PRC 12260.

The ranking criteria includes consideration of the environmental values proposed for protection, whether values can be managed and monitored efficiently and effectively, proximity of parcels to other like managed parcels or protected lands, consistency of landowner's management goal with the resource protections proposed, whether suitable organization has expressed an interest in working with the Department and the landowner on the project, presence of other sources of funding for eligible costs, protection status of heritage trees, the project's "working forest and rangeland" characteristics, or other relevant considerations established by the Director.

This section also requires consideration of federal ranking criteria when federal funding is used. The section also provides direction and criteria for the Director to deviate from the ranking criteria and project prioritization criteria described above.

§ 1573.4 Availability of Federal Funds establishes the procedure for submitting ranked projects for consideration for federal funds. Applications are submitted once a year at a date requested by the USFS. This ensures that routine and consistent process is established and provides time-certainty for applicants and agencies to plan work needs.

§ 1573.5 Availability of State Funds requires a resolution from the Board when agreement for projects involves other government agencies or boards. This ensures continuity and oversight by the Board for this program.

§ 1573.6 Non-funded Applications establishes the procedure for addressing applications that are not funded. Requirements include the department notifying applicants, applications being retained and automatically considered by the department in the next funding cycle, and submission of revised application. This subsection provides an efficient process for orderly consideration of projects for both government agencies and applicants.

§ 1574 Conservation easement Criteria establishes the criteria that must be a part of every eligible project. The criteria 1) limits activities that prohibit timber harvesting or grazing to not more than 15% of the timberland and not more than 15% of the grazing land found on the property. This ensures that land is maintained as traditional working forests that produce wood products.; 2) requires timberland management will provide for Maximum Sustained Production of High Quality Timber Products consistent within protection and rehabilitation of watershed value and wildlife habitat. This ensures that timber management is conducted consistent with the Forest Practice Act in PRC 4511 et seq.; 3) limits building structures on the property by number and/or type and/or size and severance of property rights (parcel splits) for consistency with the intent of the underlying statutes; 4) allows the maintenance of rights-of-way to in-holders or landlocked landowners.; and 5) allows the Director to require the Department of Forestry and Fire Protection to hold title to those conservation easements that are primarily for the purposes of conserving working forest lands. This helps assure that easements are managed for working forest attributes such as commodity production that generates economic activity or for restoration purposes that improve forest productivity and more greatly serve as prime carbon sinks,

§ 1575 Funded Applications (or Projects) establishes the information transmitted to the applicant notifying them of approval and funding. It also specifies the subsequent work to be done and who will do it. This information is necessary for orderly conduct of the project.

§ 1575.1 Responsibilities of the Department establishes disclosures requirements by the Department to the successful applicant. These disclosures include statements on: fair market value; that the sale is strictly voluntary; that Federal and/or State appraisal standards must be met; and that the property will not be purchased if negotiations do not result in amicable agreement.

§ 1575.2 Landowner Responsibilities requires applicants whose projects are fully funded, must complete the easement transaction within two years of the state receiving grant funds for their project. The subsection also requires the applicant to work with the state to obtain the transaction items necessary to complete the project. Subsection (b) details the terms and conditions of the appraisals; Subsection (c) through (d) establish the information that must be documented in the easement deeds. This includes conveying interest in lands to achieve the land conservation objectives of the Program and conveying interests in perpetuity; Subsections (e) requires preparation and periodically update a management plan; and (g) requires endowing or securing funding for monitoring costs.

§ 1575.3 Disbursement of Funds establishes the conditions needed to be agreed upon by the applicant prior the Director disbursing any funds. Conditions include limitations on use of funding, factors listed in § 1574 Conservation easement

Criteria; the recipient of the easement is qualified to monitor and enforce the easement, and that the conservation provisions of the easement remain in effect following the transfer.

§1576 Responsibilities for Monitoring establishes requirements for the organization acquiring an easement to monitor the terms and conditions of the easement in order to assess the condition of the resources being protected. The section includes that any entity acquiring a conservation easement acquired adequate funding for easement monitoring. The section also describes timeframes and reporting requirements of the monitoring, and corrective actions if the terms of the easement are found to be in nonconformance.

ALTERNATIVES TO THE REGULATIONS CONSIDERED BY THE BOARD AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Board has considered several alternatives to the proposed regulation.

Alternative 1: The no rule alternative would result in failing to carryout the mandate of the legislature. This alternative was rejected because it would result in the loss of the Program

Alternative 2: The less prescriptive alternative would keep rules to a minimum with no criteria for the conservation easements. This alternative was rejected because it failed to provide the guidance needed to operate the program in a manner consistent with the needs of the state.

Alternative 3: The more prescriptive alternative would provide for a very rigid set of requirements in the conservation easements. This alternative was rejected because it failed to provide the flexibility needed to apply the program to the various types of lands that could be eligible for the program in accordance with the AON.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The Board has not identified any significant adverse environmental effects and mitigations associated with the implementation of these rules.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Board has not identified any alternatives that would lessen any adverse impact on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The Board staff estimated the regulation should not have any adverse economic impact on any business. The Program is voluntary and each landowner decides whether the Program is in their best economic interest. Conservation easements generally have an immediate economic benefit to landowners in that they are reimbursed for the forgone development value. Also, if an easement is granted in perpetuity as a charitable gift, some federal income and estate tax advantages usually accrue. These tax savings may be substantial, and are often cited as a major factor in landowners' decisions to donate easements.

Fiscals impacts could result to local governments because of the reduced tax basis of the land (value of the land) resulting from development limitation placed on the land via the easement. This consequence is a result of the underlying Program statutes. The proposed regulation does not affect taxation consequences of projects beyond the undying statutes and therefore does not result in local tax revenue implication.

The property tax loses to local government are not estimated because each property has differing values that are retained or forgone as part of the conversation easement. Over the last ten years over 20,000 acres with a conservation easement value of over \$40 million has been secured by the program.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The State Board of Forestry and Fire Protection consulted the following listed information and/or publications as referenced in this *Initial Statement of Reasons*. Unless otherwise noted in this *Initial Statement of Reasons*, the Board did not rely on any other technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

1. Public Resource code 1220-12292
2. Title 16 of U.S.C. 2103 et seq.
3. Report to the BOF regarding Forest Legacy Requirements in CA Forest Legacy Act of 2007.
4. Synopsis and Excerpts of BOF Policies on Maintaining Working Forest and Rangelands. BOF Staff Report, October 2010.

Pursuant to Government Code § 11346.2(b)(6)

In order to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues as those addressed under the proposed regulation revisions listed in this *Initial Statement of Reasons*; the Board has directed the staff to review the Code of Federal Regulations. The Board staff determined that no unnecessary duplication or conflict exists.

PROPOSED TEXT

The proposed revisions or additions to the existing rule language are represented in the following manner:

The following revisions or additions to the existing rule language are represented in the following manner:

UNDERLINE indicates an addition to the California Code of Regulations, and

~~strikeout~~ indicates a deletion from the California Code of Regulations.

All other text is existing rule language.